IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 240 OF 2007

Ramesh Shyamprasad Pandey ..Applicant

Vs.

Union of India and ors. ..Respondents

Mr. U.P. Warunjikar for applicant.
Mrs. A.S. Pai for respondent nos.1 and 2.
Mr. Y.S. Shinde, APP for respondent no.3-State.

CORAM: B.H. MARLAPALLE, J.

Date : January 25, 2007.

P.C.:

1. Heard Mr. Warunjikar the learned counsel for the applicant and Mrs.Pai the learned counsel for the respondent nos.1 and 2 and the learned APP for respondent no.3-State.

2. The present applicant is in judicial custody since 7/12/2006 pursuant to the Remand Application No.113 of 2006 preferred by the second respondent before the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai. His judicial custody was extended from time to time. His

first bail application was rejected on 20/12/2006, the second bail application was rejected on 4/1/2007 and the third bail application was rejected on 20/1/2007 by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai. Hence this application for being released on bail and admittedly during the pendency of the investigation.

3. As per the respondent nos.1 and 2, on the basis of specific intelligence gathered regarding unauthorised import by concealment and clandestine clearance, the officers of the Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai on 5/12/2006 at 16.30 hrs. intercepted a 40 feet container bearing No.IALU-4553921 loaded on a trailer truck bearing registration No.MH-43-E1345 on Mallet road. On enquiry with the driver of the said trailer truck it was ascertained that the aforesaid container containing import consignment allowed for clearance after being given out of charge by Customs at Frere Basin-1 yard (docks) of the Mumbai Port Trust was to be taken to Manish market for unloading the goods. Preliminary scrutiny of the documents revealed, inter

alia, that the imported goods in the said container were cleared by filing the Bill of entry No.727840 dated 4/12/2006 with the New Custom House, Mumbai by Custom House Agent M/s. A. Abba & Sons. CHA No.11/396 in the name of M/s. Ratan Enterprises, Gandhinagar, Gujarat. The goods in the said container were declared to contain Tooth brushes, Baby Diapers, Plastic Bowls etc. of a total declared value of Rs.3,03,359/- and Customs Duty amounting to Rs.84,621/- was paid on the said goods. It, however, appeared that goods in the aforesaid container were not examined as bottle seal of the shipping line affixed on the doors of the container, at the port of loading i.e. Dubai, was found intact. The driver of the above stated trailer truck was instructed to take back the container to Frere Basin-1 yard of the Mumbai Port Trust, as the goods in the said container were required to be examined in detail. Accordingly, the said container was brought back to Frere Basin, Mumbai Port Trust, after completing due formalities with the Port Trust authorities and it was grounded in front of Shed No.1, in Frere Basin with Kalmar Crane. The detailed examination of the goods was carried out

under panchanama by DRI officers by breaking open the bottle seal No. 160620 of the shipping line, affixed on the door of the container at the port of loading in the presence of Customs Appraising staff, the Customs staff posted at the north gate of Frere basin, staff of Mumbai Port Trust posted at Shed No.1, Frere basin and Shri Ramesh Pandey i.e. the present applicant, who identified himself to be an employee of M/s.A.Abba & Sons (CHA No.11/396).

4. The said container was found stacked with corrugated boxes neatly stacked upto its ceiling. All the corrugated boxes were got unloaded from the container and were arranged as per the markings appearing on them. A total number of 1369 cartons as against 1407 declared cartons were found in the said container i.e. 38 cartons were found short as per the relevant bill of lading, invoice and packing list stated to have been submitted with the bill of entry by the importer. As the unloading process was underway, it was noticed that 10 cartons declared to contain "Tooth brushes" were unusually heavy. While the above proceedings were underway, respondent no.3

informed the DRI officers that the person who had assigned him the job of clearance of the above goods, was waiting outside the gate of Frere Basin and accordingly arrangements were made to secure his presence (respondent no.1) i.e. Mr.Mohamad Ghouse Kareem to witness the above stated examination of the goods. On opening each of the aforesaid 10 cartons each of the box was found stuffed with strip containing Tooth brushes at the bottom and at the top and in between there was a HDPE bag fully stuffed with large varieties of wrist-watches bearing the name of "Titan" and "Fast Track". The details of all the wrist-watches found in the 10 HDPE bags, placed inside the above stated 10 cartons were duly noted along with the details of the Tooth brushes. In all 4959 pieces of wrist-watches were found in the above stated 10 boxes. Like wise, the contents of the remaining 1359 cartons were also examined and noted under the panchanama. The wrist-watches were cleverly found concealed and were not declared to the Customs authorities under bill of entry No.727840 dated 4/12/2006 filed for clearance of the goods, in the above stated container. The wrist-watches were found

smuggled by way of concealment and the value of the said goods was estimated to be over Rs.50 lakhs approximately. During the course of investigation, statement of each of the respondents i.e. the present applicant and two others, namely, Mohamad Ghouse Kareem and Mohamad Imran Arif Chasmawala were recorded.

5. In his statement dated 6/12/2006 the present applicant, inter alia, stated, as per the respondents, as under:-

> "He has been conducting the business of customs clearance by operating under the Custom House Agent (CHA) licence of M/s.A.Abba and Sons (CHA 11/396); that custom clearance of consignment covered under Bill of entry no.727840 dated 4/12/2006 in the name of M/s. Ratan Enterprises, Gandhinagar, Gujarat was undertaken by him at the behest of respondent no.1; that he was introduced to respondent no.2 by respondent no.1; that he had undertaken the job of above stated clearance

for a monetary consideration of Rs.1 lakh over and above the receipted charges; that he got the import invoice, submitted with the bill of entry, prepared at a local data processing centre by grossly undervaluing the value of goods in the consignment; that after assessment of the bill of entry, on second check basis by the Appraising Group in the Custom House, he managed to clear the container with seals, affixed on it at the port of loading, intact i.e. without examination of the goods as per the "examination order" given by the Appraising Group, on the basis of a out of charge endorsement obtained by him from Appraising officer, who was posted in a different shed in the dock. Respondent no.3 further admitted to have cleared 3 consignments in the past for respondent no.1."

6. Mr. Warunjikar the learned counsel for the applicant submitted that even if the case of the respondents is taken as it is, the offences charged

are bailable and in support of these submissions he relied upon certain orders passed by this court from time to time. He also referred to the orders extending the remand and also pointed out the amendment to Section 137 of the Customs Act, 1962 whereby sub-section 3 came to be added. It was submitted that the offences alleged are compoundable in any case and that by itself would be a reason to release the applicant even when the investigation is pending. As per Mr. Warunjikar the alleged offences may at the most be punishable under Section 135(1)(ii) and not in any case under Section 135(1) (i) of the Customs Act, 1962. He also pointed out that the confiscation or seizure of the goods is not from the possession of the applicant.

7. Mrs. Pai the learned counsel appearing for the respondent nos.1 and 2 on the other hand has referred to the statement of the applicant himself made on 6/12/2006 and submitted that the applicant and other two co-accused are involved in a conspiracy to defraud the Government of its revenue by smuggling dutiable goods in a cleverly concealed manner as also

by causing imports of other goods by heavily under-invoicing the value to avoid payment of appropriate duty leviable thereon. The documents used to clear the import consignment have been admittedly fabricated to facilitate clearance of the consignments in an unauthorised manner and the three accused have indulged in such clearances in the past as well. The nature of goods seized in this case especially wrist watches bearing the brand name "Titan" which are manufactured in India is a matter of deep concern and call for enquiries in India as well as abroad, not only for infringement of import violations but also for an evaluation on the abuse of benefits which may have been availed earlier under the Central Excise laws on export of such goods from India. Mrs. Pai further stated that if the applicant is released at this stage pending the investigation, the course of justice will be thwarted and the investigation will be hampered. She also stated that some of the orders relied upon and passed by this court have been stayed by the Apex Court. By relying upon the order passed in Criminal Application No.4233 of 2006 by this court on 18/12/2006 Mrs. Pai submitted that an offence

falling in Section 135 (1)(a) of the Customs Act is a non-bailable offence and the nature of offences would be clear only after the investigation is completed. It was her contention that during the course of investigation the possibility cannot be ruled out that the applicant and other co-accused may be charged of other offences like Sections 467, 468, 429, 120-B etc. of IPC and, therefore, it would be pre-mature to presume that the authorities have made out only a case punishable under Section 135 (1) (ii) of the Customs Act, 1962.

8. The reasoning set out by the learned Additional Chief Metropolitan Magistrate in rejecting the bail applications cannot be, in the circumstances of this case, faulted with. The investigation will have to be allowed to be completed and it is only then the applicant can make out a case of either a bailable offence or non-bailable offence. But if on the contrary, the prosecution makes out a case not only punishable under Section 135(1)(ii) but also some other offences punishable under the Indian Penal Code, the situation may be different. I have no doubt in my

mind that the applicant's case will be more appropriately considered for being released on bail after the investigation is completed or the show-cause notice is issued. I have been informed that as per the circular issued by the Government of India, the show-cause notice has to be issued within a period of six months. Mrs. Pai, on instructions, stated that the show-cause notice would be issued in the instant case within the stipulated period of six months.

9. Hence, I am not inclined to allow this application and the same is hereby rejected. I also make it clear that as and when the applicant files a fresh bail application before the court below on completion of the investigation or on the receipt of the show-cause notice, the same shall have to be considered on its own merits and without being influenced by any observations made in this order.

(B.H. Marlapalle,J.)